

ROBERTH B. TOLENTINO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND LOPE DULFO, RESPONDENTS.

G.R. NO. 170396. August 31, 2006

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Decision of the Regional Trial Court (RTC), Branch 92, Quezon City convicting petitioner of the crime of estafa and sentencing him "to suffer the indeterminate penalty of imprisonment of fourteen (14) years as minimum to twenty (20) years as maximum."

In a complaint filed with the Regional Trial Court (RTC), Branch 92, Quezon City, complainant Lope Dulfo charged Roberth B. Tolentino, herein petitioner, with the crime of estafa under Article 315, par. 3(a) of the Revised Penal Code. The complaint alleges that Lope Dulfo and his wife mortgaged their Tamaraw FX motor vehicle to petitioner for P150,000.00. Petitioner required them to sign a blank paper which they thought to be their acknowledgment that they received the said amount. Later, petitioner converted the blank paper they signed into a Deed of Sale, with petitioner as the buyer. When the couple tried to redeem the vehicle, petitioner refused to return it to them. Subsequently, they learned that petitioner had sold the vehicle to one Errol Pamon, as shown by another Deed of Sale purportedly executed by respondent Lope Dulfo and his wife.

After trial, the RTC rendered a Decision convicting petitioner. Upon its promulgation on February 22, 2005, petitioner failed to appear. Nonetheless, he filed a Motion for Reconsideration.

On September 14, 2005, the RTC issued an Order holding that the motion for reconsideration "cannot be given due course" as petitioner lost this remedy for his failure to appear during the promulgation of the Decision, thus:

Section 6 (par. 5), Rule 120 of the Rules of Criminal Procedure provides that "(i)f the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against this judgment and the court shall order his arrest." During the promulgation of judgment held on 22 February 2005, the accused together with his counsel failed to appear despite due notice. Accordingly, and pursuant to the aforementioned rule, the accused lost his right to avail of the remedy of a motion for reconsideration against the judgment of conviction.

On December 1, 2005, petitioner filed the instant petition for certiorari praying that the trial court's Decision be set aside and a new judgment be promulgated acquitting him of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

In his Comment, the Solicitor General averred that certiorari cannot be availed of in lieu of a lost appeal and thus prayed for the dismissal of the petition.

Under Sections 2 and 3, Rule 41 of the 1997 Rules of Civil Procedure, as amended, petitioner's remedy was to appeal the trial court's Order of September 14, 2005 to the Court of Appeals within fifteen (15) days from his notice thereof.

Petitioner received a copy of the September 14, 2005 Order on October 12, 2005. However, he did not interpose an appeal within the 15-day reglementary period. Instead, he filed the instant petition for certiorari which is not permissible.

For the writ of certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, to issue, petitioner must show that he has no plain, speedy, and adequate remedy in the ordinary course of law against his perceived grievances.[1] Certiorari cannot be used as a substitute for a lost remedy of appeal.[2] Certiorari will lie only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment correctable by an appeal or a petition for review under the same Rule.[3]

Moreover, this petition violates the hierarchy of courts. This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with the Court of Appeals.[4] However, the choice of where to file the petition for certiorari is not left to the party seeking the writ. We remind litigants and lawyers to our policy laid down in *Vergara v. Suelto*,[5] on hierarchy of courts, reiterated in *People v. Cuaresma*,[6] thus:

This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

We find that the RTC correctly denied petitioner's motion for reconsideration. Neither petitioner nor his counsel appeared during the promulgation of its judgment despite notice. Consequently, petitioner lost all remedies against the denial of his motion, pursuant to paragraph 5, Section 6, Rule 120 of the Revised Rules of Criminal Procedure, as amended, which provides that "(i)f the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest." Petitioner failed to prove that his absence was for a justifiable cause.

WHEREFORE, we DISMISS the petition. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Azcuna and Garcia, JJ., concur. Corona, J., on leave.

[1] *Asian Transmission Corporation v. Court of Appeals*, G.R. No. 144664, March 15, 2004, 425 SCRA 478.

[2] *Land Bank of the Philippines v. Continental Watchman Agency, Inc.*, G.R. No. 136114, January 22, 2004, 420 SCRA 624; *Servillo Trading Company v. Semana*, G.R. No. 152456, April 28, 2004, 428 SCRA 239; *Cunada v. Drilon*, G.R. No. 159118, June 28, 2004, 432 SCRA 618; *Alon v. Court of Appeals*, G.R. No. 136422, July 7, 2004, 433 SCRA 550.

[3] *Manila Electric Company v. Barbis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11; *Tichangco v. Enriquez*, G.R. No. 150629, June 30, 2004, 433 SCRA 324.

[4] Section 4, Rule 65, 1997 Rules of Civil Procedure.

[5] No. L-74766, December 21, 1987, 156 SCRA 753.

[6] G.R. No. 67787, April 18, 1989, 172 SCRA 415.

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